Saskatchewan Labour
Labour Relations and
Mediation Division

INTEREST BASED NEGOTIATION

A Workshop on Joint Problem Solving

106-07021/

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Theory of Conflict

The *ESCALATION* of Conflict

The same pattern can be identified in all types of conflict if it remains unchecked: conflict escalates; it develops a "life of its own."

Once escalated, if the parties do not seek assistance or consciously withdraw the following spiral can unfold.

Five Styles of Resolving Conflict

The following categories show five general styles of resolving conflict. Your personal style may vary depending on the situation you find yourself in and the person you are dealing with, just to name a few. It is also important to recognize that there is no *right* style; different styles may be appropriate in different situations.

Competing:

You tend to pursue your own concerns at the other's expense. This is a power-oriented mode, in which one uses whatever power seems appropriate to win one's position. This may include your ability to argue, your rank, and economic sanctions. Competing might mean standing up for your rights, defending a position which you believe is correct, or simply trying to win.

Avoiding:

You tend not to address conflict and not to pursue either your own concerns, or those of the other. Avoiding may take the form of diplomatically sidestepping an issue, postponing, or simply withdrawing from a threatening situation.

Accommodating:

You tend to neglect your own concerns to satisfy the concerns of the other, involving an element of self-sacrifice. Accommodating may mean selfless generosity or charity, obeying another's order when one would prefer not to, or yielding to another's point of view.

Compromising:

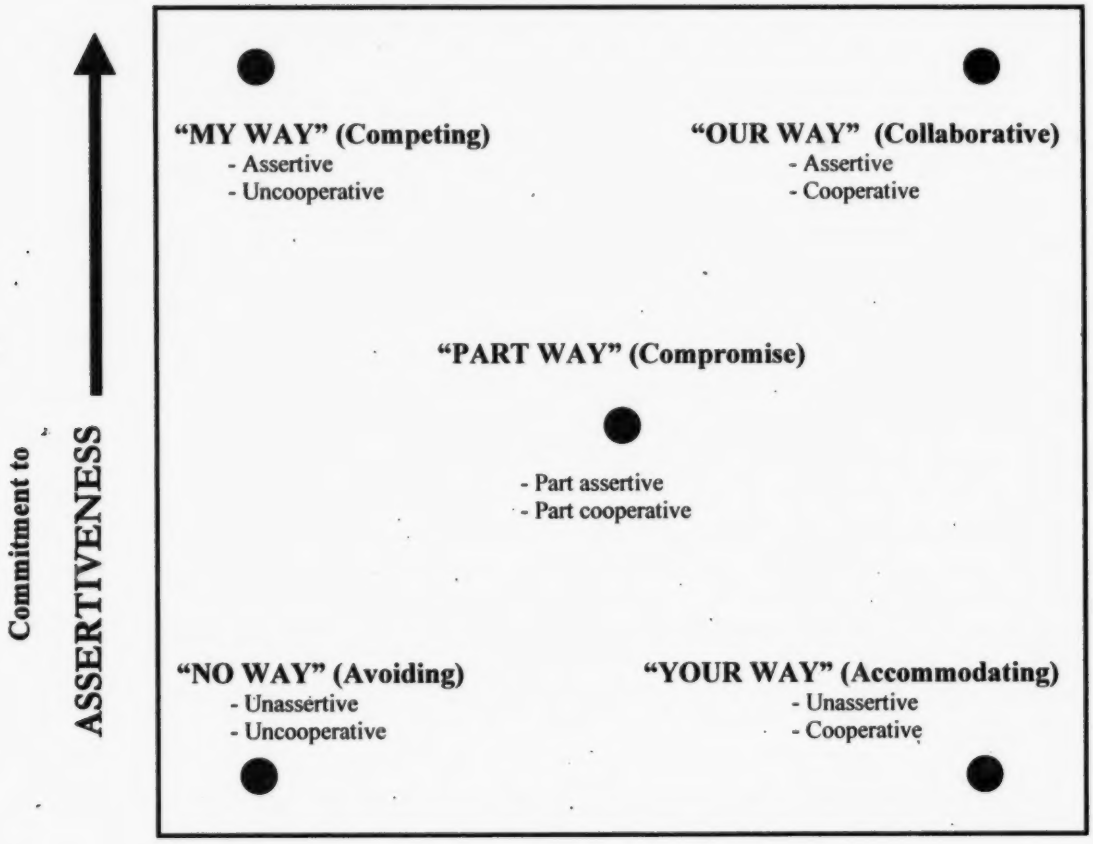
You tend to look for some expedient, mutually acceptable solution, which partially satisfies both. It represents the middle ground between competing and accommodating – giving up more than competing, but less than accommodating. It addresses an issue more directly than avoiding, but not in as much depth as collaborating. It may mean, splitting the difference, exchanging concessions, or seeking a quick middle ground.

Collaborating:

You tend to attempt to work with the other person to find some solution that fully satisfies the concerns of all people. It means digging into an issue to identify the underlying concerns and find an alternative, which meets the needs of both sets of concerns. It might mean exploring a disagreement to learn from each other's insights, or confronting and trying to find a creative solution to an interpersonal problem.

(The above categories are adapted from the "Thomas-Kilmann Conflict Mode Instrument", by Kenneth W. Thomas and Ralph H. Kilmann, published in 1974 by XICOM, INCORPORATED)

Five Styles of Resolving Conflict



POSITIONAL NEGOTIATING VS. INTEREST BASED NEGOTIATING

Definitions

Positional/Traditional Negotiating:

Positional or traditional negotiating is basically adversarial and distributive. It begins with each party meeting privately to discuss and develop their ideal proposal package. These proposals or solutions are written down with specific attention given to the wording or suggested contract language.

During joint sessions, one party's unilateral demand is presented and then met with a position put forward by the other party and an ongoing exchange begins. The parties continue to make counter offers until they hit upon a solution that is acceptable to both sides.

What are Positions

Positions are our ideal fix or solution to a situation. Each party views and understands a problem or situation in his or her own particular way. Their position is what they would like to fix the situation, as they see it. It is based on the information the party has prior to negotiation.

There are two ways to be positional. One way is by using a *soft position* and the other way is by using a hard position.

Soft Position	Hard Position
• Avoid conflict	Win
• Friends	Adversaries
• Change your solution easily	Dig into your solution
• Concede generously	Concede stubbornly
• Avoid a contest of will	Win a contest of will
• Make concessions for the relationship	Demand concessions to have a relationship
• Back down to ultimatums	Make threats

Definition of Interest Based Negotiating

Interest based problem solving is collaborative and integrative in nature. It begins with the parties meeting jointly and utilizing an interest based model to lead them through their negotiations from start to finish. Each party spends time educating the other about their interests and needs on each topic. The parties then "jointly" problem solve by trying to find a way to accommodate the greatest possible number of interests for everyone on each topic.

What Are Interests?

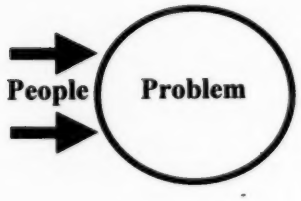
Interests can be described as our underlying needs, goals, concerns and fears. Interests tend to be the motivators behind positions; positions are put forward as unilateral solutions to interests. Negotiators often assume that if positions are opposed, then interests must be opposed as well. Interests, however, are often shared or compatible, opening up a whole new range of solutions.

Interests are often identified by asking questions. You must remain curious and continue to ask questions until you have a good sense of the underlying needs.

It is important not only to understand the other person's interests, but also to be able to clarify and voice your own interests. Creative and durable agreements will only be reached if both sets of interests are met.

The satisfaction triangle is used to describe the relationship between the different types of interests. Interests are often described as being of three general types: substantive, procedural and psychological.

Interest Based Negotiating Dynamics



Interest based negotiating looks and feels like this.

Positional Negotiating Dynamics

Positional negotiating looks and feels like this.

Comparison of Positional Negotiating vs. Interest Based Negotiating

Positional Negotiating Process

- Starts with extreme positions
- Tends to confuse or disguise true interests
- Trades concessions
- Discredits the other party
- Treats process as a competition

Interest Based Negotiating Process

- Focuses on interests, not positions
- Focuses on issues, not personalities
- Creates options to satisfy interests
- Evaluates options using standards
- Avoids reliance on power

Positional Negotiating Bargainers

- The pie is limited: my goal is to get the biggest piece
- A win for me = a loss for you
- We are opponents
- There is one right solution – mine
- I must stay on the offensive
- A concession is a sign of weakness
- Self-esteem is preserved

Interest Based Bargainers

- The pie is not limited
- The goal = win/win
- The needs of all parties must be addressed to reach agreement
- We are cooperative problem solvers
- The relationship is important
- There are probably several satisfactory solutions

Comparison of Positional Negotiating vs. Interest Based Negotiating

Both Positional Negotiating and Interest Based Negotiating have certain advantages and disadvantages.

Positional Negotiating can be used when:

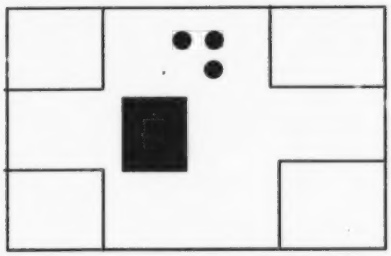
- Relationships are not ongoing
- Relationships are not important
- Needs of the opposite party are not important
- A party wants to maximize its gain
- Legitimacy of the opposite is not accepted
- A party is not prepared to consider options
- There are no options

Interest Based Negotiating can be used when:

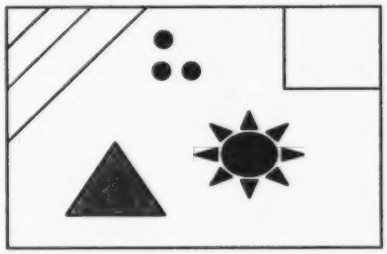
- Relationships are ongoing
- Relationships are important
- Enhancing the relationship is important
- Understanding the needs of both parties is important
- The outcome needs to be acceptable to both parties
- The outcome needs to be viewed as fair and reasonable by both parties

Giving Your Picture and Getting Their Picture

Communication for Joint Problem Solving



Party A's view or picture of problem

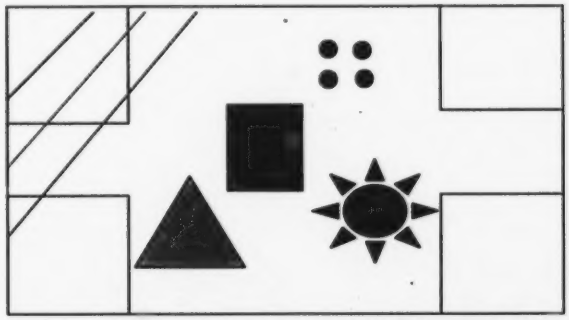


Party B's view or picture of problem

In positional problem solving each party has a picture or understanding of the problem from their own point of view. The solutions they put forward come from only "their picture" of the situation. These solutions are positions, and conflict arises when these positions are opposing. In positional problem solving, parties compete until one position or the other wins out.

In interest based problem solving, the parties use a process or model to create a new or "joint picture" of the problem. It is important to get each party's complete picture on the table. The new joint picture is created from the understanding of each individual picture of each party at the table.

It is necessary that all parties have the opportunity to talk about how they see things, what impact it has had on them and believe the other party (parties) understands what they are saying. It is only after this understanding takes place that creating joint options can occur.



Party A & B's view or picture of the problem

A new "picture" of the problem is constructed by combining all the individual parties' pictures. Solutions that address this new picture or more complete understanding of the problem are brainstormed and worked on by all parties. Options that work for the large picture are often acceptable to all participants and mutual agreement can be reached.

Non-Verbal and Verbal Communication

Our goal for promoting improved communication is to achieve better understanding. The basic human needs of being valued and understood are very important. Every speaker wants to be heard and understood. In joint problem solving, each speaker also needs to understand all other person's pictures without qualifying or judging. It is through this kind of effective communication that you can discover and explore interests. The challenge for us, as givers and receivers of communication, is to send and interpret messages as accurately as possible. This requires a range of communication skills and often, a great deal of patience!

Communication can be divided into two broad categories, non-verbal and verbal communication. Together, these two ways of communicating create 100% of the message we send someone or receive from someone. A message is derived through a combination of body language, tone of voice and choice of words.

_____%	**body language**
+	+
_____ %	**tone of voice**
+	+
_____ %	**words**
= 100 %	**= The Message**

Non-Verbal Communication:

Over 90% of the messages we convey to others are expressed non-verbally, through body language, facial expression and pauses between words.

We interpret messages based on the combination of all of the above signals. How we interpret messages is colored by our own assumptions, fears, and anticipation about what the speaker intends.

When we are communicating, particularly in conflict situations, it is important to remember that we send messages with more than just the words we use. If, while we are talking, we are also wagging our finger, rolling our eyes, frowning or raising our voice, the person listening to us will receive a message far beyond the words we speak.

If a speaker's non-verbal messages are not congruent with their verbal message, the listener will place more importance on the speaker's body language and tone of voice or their non-verbal message. Such incongruent messages can be responsible for igniting or escalating a negative environment.

Our goal is to increase awareness that as communicators we effect and are affected by non-verbal messages. We can either be helped or hindered by our own use of, or response to, non-verbal communicators.

Verbal Communication:

Less than 10% of the messages we convey to others are expressed verbally, through our choice of words.

Verbal communication can also be divided into two broad categories, assertion and active listening. The assertion skills are used when "Giving Your Picture," and the active listening skills are used when "Getting Their Picture."

Giving Your Picture

Assertive Communication

Communicating assertively means you make direct statements about your thoughts, feelings and goals. Assertive people stand up for themselves and also pay attention to the rights and feelings of others. Assertive people have both a willingness to be influenced and an ability to persuade. Assertive people can make direct requests and direct refusals.

Assertive statements are not aggressive statements; the difference is how they are presented by the speaker and how they are received by the listener. When we speak assertively, we are relaxed and our voices are firm and well modulated. We convey both confidence and empathy.

Guidelines for asserting yourself

An assertive statement includes the following three parts:

1. How I feel about the situation - the emotional impact on you.
2. What I think - my perspective is shared by describing the situation without inference to the motives of the other party.
3. What I need - be clear and specific, including what you can or cannot do.

Assertive statement example

The following are four practice steps to use when learning to speak assertively:

1. I feel... (state the feeling)	I feel betrayed ...
2. When you ... (describe the other person's behavior)	When you told Bob something I told you in confidence...
3. Because ... (state the effect on you)	Because it's humiliating and makes me feel I can't trust you.
4. I need ... (state what you would prefer)	I need to know that when I tell you something personal and private, you won't tell anyone.

Getting Their Picture

Active Listening

Active listening is used to identify the content, feeling and meaning of a message. There are many reasons why people are seldom direct in expressing their ideas and feelings. Often it is not considered appropriate in our culture to confront people. Most people do not want to offend anyone, as no one likes being rejected. In addition, many people assume that the other party already knows how they feel. If a number of assumptions are made by the speaker and the listener, confusion and possibly conflict will occur.

Active Listening Techniques

The following three techniques will assist you to listen actively:

Reflecting Emotion and Content

Reflecting Emotion: Underlying many statements is an emotional message. The speaker may express a feeling verbally, or you may decipher the feeling through the speaker's body language or through your intuitive voice. Reflecting the emotional content of the speaker's message can be a way to acknowledge and defuse that emotion. Often, a speaker will not feel they have been heard until this has occurred.

Reflecting Content: Reflecting the content of the speaker's statement can be done through paraphrasing or stating the essence of the other's content in your own words. It is important to be concise: reflect only the essentials, focus on the content, and where possible, use some of the listener's own words.

Open Questions

Effective questions to gather information are open and not closed. Closed questions tend to be narrow and can often be answered with a "yes" or "no," and limit the response. Open questions, on the other hand, require broad answers and invite the answerer to look deeper into their interests or concerns in order to respond.

Summarizing

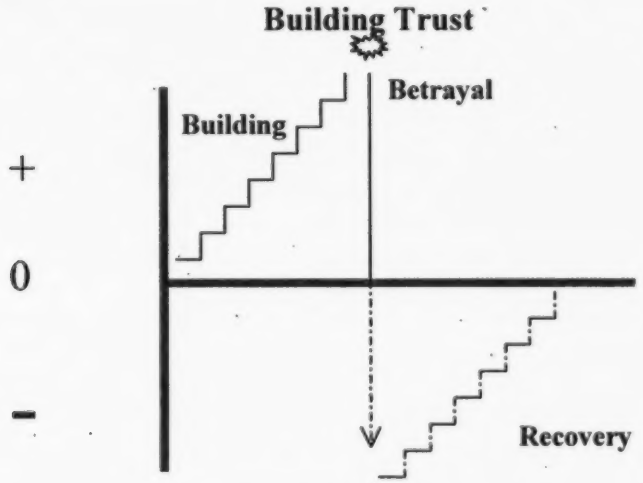
Summarizing is an effective way to capture the main theme of a conversation. Summarizing can be used to check for accuracy and ensure you understand the speaker correctly. It can also be used to give the speaker a feeling of movement in exploring feelings and content – a sense of moving forward in the conversation.

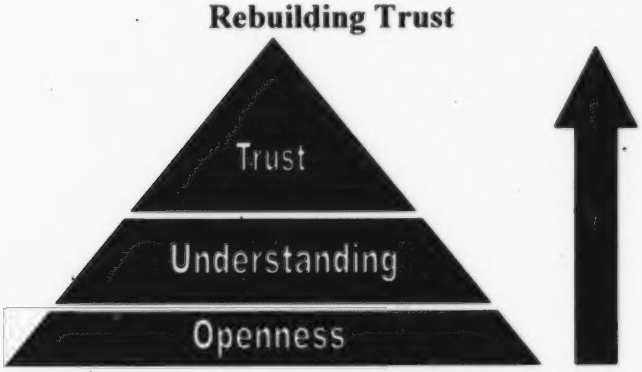
Blockers to Moving from Positional Negotiating to Interest Based Negotiating

Anger, power, and lack of trust are some "Blockers" that you may encounter when negotiating. You need to understand the dynamics behind these blockers to be able to move past them. "Understanding" is the key for movement by the parties that is mutually agreeable to both. What is helpful to remember is that you can **UNDERSTAND WITHOUT AGREEING**.

Trust

Trust plays on the way you respond to conflict. Be aware that if you are below zero, the rebuilding of trust will take more effort and time than the building of trust above zero. If the rebuilding of trust is to take place, conscientious efforts and a genuine commitment will be needed by both sides.





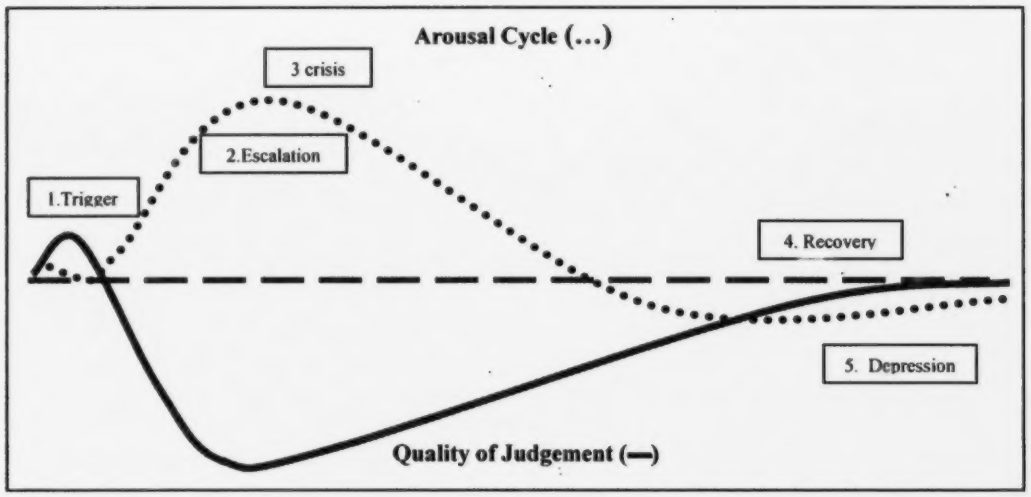
You will need to be open with the other party and allow them to feel heard and understood before you can start rebuilding trust. The open communication necessary in joint problem solving assists the parties involved with feeling heard and understood and can set the stage for rebuilding trust.

Anger

We experience anger in our bodies and our minds. This illustration shows our bodies response to angry thoughts and feelings.

The reality is, based on medical research, that the angrier you are the less blood you have in your brain. This definitely affects the things you say and the choices you make.

Anger Cycle



Stage 1: The Trigger Phase: some event will trigger the cycle. The event may be an external threat or comment, or may be internal such as memory or perceptions.

Stage 2: The Escalation Phase: the body's physiological arousal system prepares for fight or flight. The physiological responses can include: increased respiration, heart rate and blood pressure, increase in tone of voice and visible muscle tension.

Stage 3: The Crisis Phase: the body is at maximum stress and the person will make an aggressive response. Phase three is considered the "point of no return." At this time, judgement is very poor and rational discussion may be futile. This is a good time to disengage.

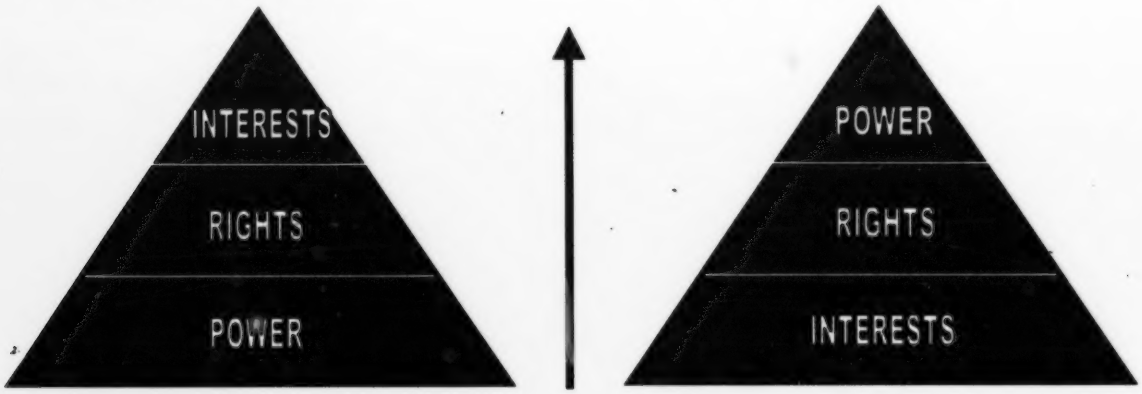
Stage 4: The Recovery Phase: the crisis has passed, but the physiological functions are not yet back to normal. Caution must be exercised so as not to provoke another confrontation.

Stage 5: The Post Crisis Depression Phase: physiological functions and quality of judgement have returned to near normal, although the heart rate may remain below normal and depression may set in. Individuals may withdraw or become self-destructive. `Parties should be aware that offers for resolution made during this phase may be motivated by guilt rather than attempting to meet party's interests.

Power

Power can be actual. When, however, you are in conflict and entering into problem solving, it is often more the perception of power that gets you stuck. When you are deciding how you want to bargain it is important to discuss what part you want power to play in the negotiations. The following diagram helps to put it in perspective.

Positional Problem Solving **Interest Based Problem Solving**



Power:

- Imposing costs-economic
- Acts of aggression
- Withholding (labour)
- Ultimately a matter of perception

Rights:

- Formalized in contract law
- Precedent, seniority
- Provincial legislation
- Use a third party adjudicator

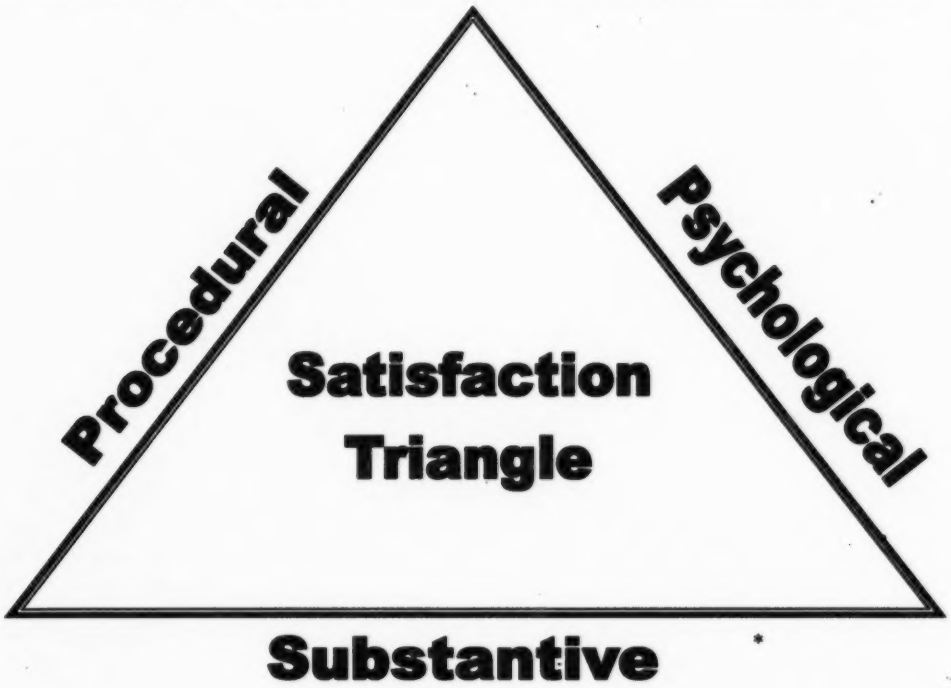
Interests:

- Needs, fears, concerns, goals
- Probe for deep-seated interests
  - help identify issues
  - uncover hidden problems
  - resolve the problem
  - improves understanding of problem

JOINT PROBLEM SOLVING

The Satisfaction Triangle

The satisfaction triangle illustrates the interdependence of the three kinds of interests.



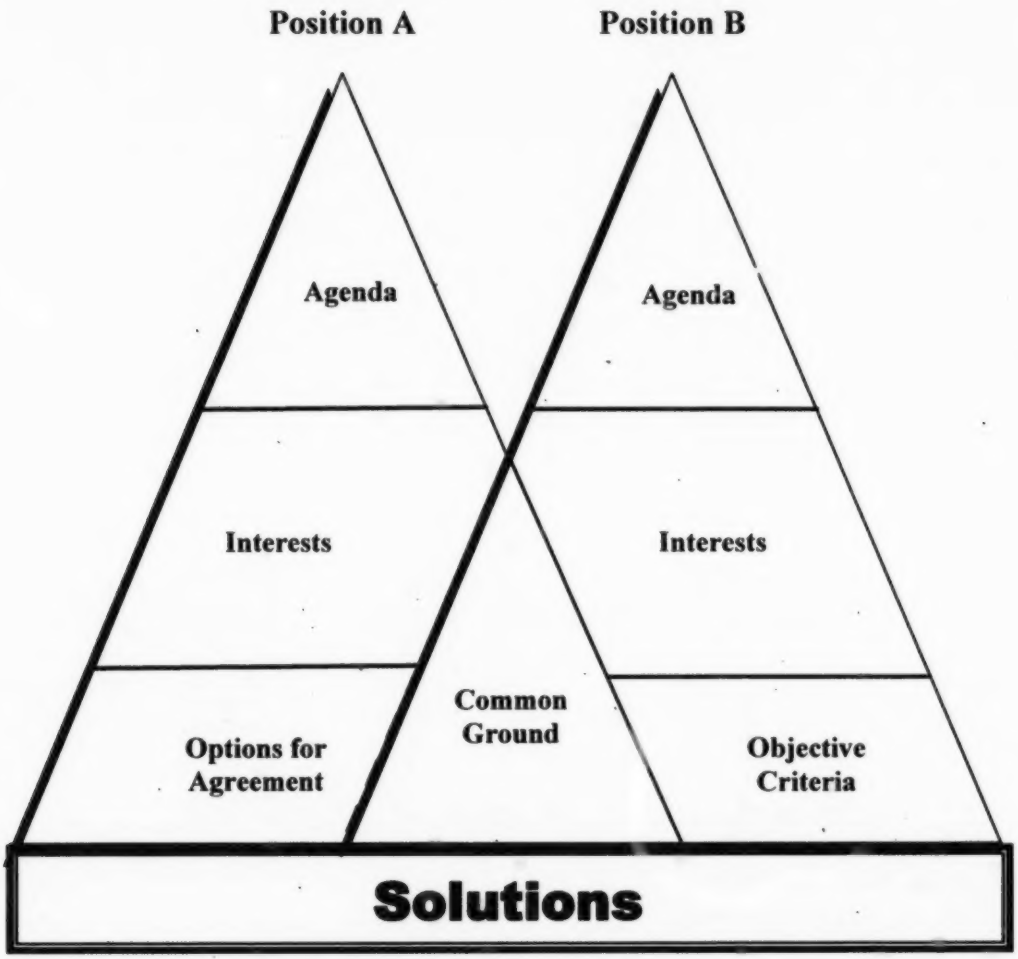
- **SUBSTANTIVE:** concrete needs such as money, time or resources.
- **PROCEDURAL:** needs relating to the way an issue is resolved, (i.e.) did people have input? Was authority used to make the decision?
- **PSYCHOLOGICAL:** emotional needs regarding how you feel about the problem and the solution such as fair, valued or revengeful.

Reaching an effective and durable agreement will be difficult, if not impossible, if you have met only one or two sets of the above interests. A settlement or agreement is not "truly" complete unless there is "satisfaction" on each of the substantive, procedural and psychological needs of each party.

Most parties focus on substantive interests and may or may not even be aware of the procedural or psychological interests of their party or the other party. Most problem solving processes fail, however, because of unmet procedural or psychological interests, not unmet substantive interests.

*Reproduced with permission of CDR Associates, Boulder, Colorado – February 1993

Moving from Positions to Interests to Agreement



Position: One party's solution to the problem. A position is a solution.

Agenda: The issues or subject matter of the dispute – those issues that need to be discussed by the parties and that need to be negotiated in order to reach agreement. Agenda items are presented neutrally and can either be shared by the parties or owned by only one.

Interests: The factors that motivate the parties to reach positions – interests, or your needs, goals, fears, and concerns underlie positions. The party's positions are intended to meet their interests.

Solutions: At the end of this process, mutually acceptable options are sought that address both parties interests rather that one party's position.

Interest Based Negotiation Model

Pre-Session – Prepare to Negotiate

- Gather information
- Hunch their needs and interests, explore yours
- Develop your BATNA/WATNA*, hunch theirs
- Find a convenient time and place for the parties to meet
- Set tone and commit to the process

Step One

- Agree on ground rules
- Discuss confidentiality

Step Two

- Identify the issues or topics to be discussed
- Form agenda and determine where to start

Step Three

- Explore interests by gathering & exchanging information
- Let each person speak
- Focus on the problem, not the person
- Use "I" language and active listening skills

Step Four

- All participants brainstorm options to address the issues
- Listen to each other without judging

Step Five

- Develop evaluation standards jointly

Step Six

- Evaluate options, consider all options
- Use joint standards as guide for judging relative merits of options

Step Seven

- Prepare for closure
- Decide on options that everyone can agree on
- Specify who will do what, when, where and to what degree
- Write the agreement

**Roger Fisher and William Ury, Getting to Yes (Boston: Houghton-Miffin, 1981)*

Glossary Of Terminology

Agenda	A list of issues or subject areas for discussion by parties involved in a negotiation or mediation.
Arbitration	The settlement of a dispute by the decision of a Judge, Umpire or Arbiter. The third party makes the decision.
BATNA*	"The best alternative to a negotiated agreement." When realistically assessed and developed, these alternatives help determine whether the agreement is one's best option, and give one negotiation power or leverage. In negotiating a pay raise, having a firm job offer with higher pay and comparable benefits elsewhere is a powerful **BATNA.**
Body Language	Communication of feelings, attitudes, and intent non-verbally through posture, eye contact, distance, gestures and movements. Congruence between body language and verbal statements gives clarity an emphasis.
Brainstorming	The generation of a wide variety of options for consideration by parties working toward agreement. The emphasis is on quantity and creativity, and the main deterrent to effective brainstorming is a tendency to prematurely evaluate ideas as they are offered.
Common ground	Any needs, concerns or perceptions which parties to a dispute may share. A mediator takes care to emphasize theses similar interests and views.
Concensus	Agreement of opinion. Often considered to be something different than what any single party might have desired initially, but which all parties can support.
Conciliation	Reconcilement; offering parties a voluntary settlement.
Conflict	A prolonged fight or struggle, opposition, disagreement or clash. A form of competitive behaviour between people or groups. Occurs when two or more people compete over perceived or actual incompatible goals or limited resources. (Boulding, 1962).

Caucusing	Holding separate meetings (either scheduled or impromptu) with each of the parties in mediation, allowing each to talk freely with the mediator about their views, feelings and needs. Caucusing may effectively address blocks or confusion in the process, interactions or imbalances between the parties, or excessive expression of emotion.
Facilitation	Make easier, help move forward, assist.
Interests	The needs, goals, fears, concerns or priorities (substantive, procedural or psychological), which should be considered in forming an agreement between parties to a dispute. Interests are the motivators behind positions. A position may be an insistence upon particular boots or eyewear for employees. The interest might be a fear for the safety while performing their duties.
Issue	The subject matter of a difference of opinion: a topic for discussion where differences exist.
Mediation	A process where third party intervener assists disputants to reconcile their differences or resolve their dispute. The mediator facilitates the process and does not impose a solution.
Negotiation	Two or more parties confer with each other, with the purpose of arriving at a mutual settlement of their dispute.
Objective Criteria	Agreed-upon standards to determine the fairness and durability of a proposed agreement. Depending upon the issues to be resolved, objective criteria may include legislation, expert opinion, equal treatment, or wages paid for similar work.
Position	The solution which a party perceives will satisfy his or her interests. The positions people take are generated by the interests which they want addressed. For example, an employee may request a raise in pay (position), when he/she needs recognition (interest) for the extra contribution to the organization after downsizing.

Time Out	To disengage or temporarily withdraw from a highly emotional exchange in order to allow a cooling off period. It may be used when either or both parties are too angry for self-management or problem solving, with the stated intention of re-scheduling to a specific future time.
WATNA*	"Worst alternative to a negotiated agreement". This is the unpleasant outcome if one is unable to negotiate an acceptable agreement. Considering one's **WATNA** and that of the other party helps to assess whether the agreement is in one's best interest, and may increase commitment toward productive negotiation. A party to mediation may have as his/her **WATNA** the arbitration process, which can be very costly both financially, emotionally and time wise.
Win-Lose Dispute/Compete	Is one in which one of the parties' gains at the expense of the other. The maintenance of the relationship is less important than winning.
Win-Win Conflict/Collaborative	Is based on the idea that most conflicts have several possible solutions, the best one being that which meets the needs of each party to the greatest degree. This approach clarifies the essential problem by encouraging people to communicate their interests. The parties are likely to commit to their agreement since they have actively participated in its creation.

Evaluation Form – Interest Based Negotiation Training Program

1. How valuable is this training service to your organization?

   Excellent Good Adequate Fair Poor

Comments:

_____

_____

2. Would you recommend this workshop to your colleagues? Yes No Unsure

3. The most helpful part of the workshop was:

_____

_____

4. The workshop would have been better if:

_____

_____

5. I found the instructors to be: Very Helpful Helpful Somewhat Helpful Not Helpful

Comments:

_____

_____

6. Can the concepts presented at the workshop be applied to your workplace outside of negotiating?

_____

_____

7. Additional Comments:

_____

_____

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